

subpart G of this part, §§ 536.114 through 536.116.

(b) *Cooperation.* Claims investigation requires team effort between the U.S. Army Claims Service (USARCS), command claims services, and area claims offices (ACOs) including U.S. Army Corps of Engineers (COE) District Offices, claims processing offices (CPOs), and unit claims officers. Essential to this effort is the immediate investigation of claims incidents. Prompt investigation depends on the timely reporting of claims incidents as well as continuous communication between all commands or echelons bearing claims responsibility.

(c) *Notification to USARCS.* A CPO or an ACO receiving notice of a potentially compensable event (PCE) that requires investigation will immediately refer it to the appropriate claims office. The Commander USARCS will be notified of all major incidents involving serious injury or death or those in which property damage exceeds \$50,000. A command claims service may delegate to an ACO the responsibility for advising USARCS of serious incidents and complying with mirror file requirements. A copy of the written delegation and any changes made thereafter will be forwarded to the Commander USARCS.

(d) *Geographic concept of responsibility.* A command claims service or an ACO in whose geographic area a claims incident occurs is primarily responsible for initiating investigation and processing of any claim filed in the absence of a formal transfer of responsibility (see §§ 536.30 through 536.36). DOD and Army organizations whose personnel are involved in the incident will cooperate with and assist the ACO, regardless of where the former may be located.

NOTE TO § 536.22: See the parallel discussion at DA Pam 27-162, paragraph 2-1.

**§ 536.23 Identifying claims incidents both for and against the government.**

(a) Investigation is required when:

(1) There is property loss or damage.  
(i) Property other than that belonging to the government is damaged, lost, or destroyed by an act or omission of a government employee or a member of North Atlantic Treaty Association

(NATO), Australian or Singaporean forces stationed or on temporary duty within the United States.

(ii) Property belonging to the government is damaged or lost by a tortious act or omission not covered by the report of survey system or by a carrier's bill of lading.

(2) There is personal injury or death.

(i) A civilian other than an employee of the U.S. government is injured or killed by an act or omission of a government employee or by a member of a NATO, Australian or Singaporean force stationed or on temporary duty within the United States. (This category includes patients injured during treatment by a health care provider).

(ii) Service members, active or retired, family members of either, or U.S. employees, are injured or killed by a third party and receive medical care at government expense.

(3) A claim is filed.

(4) A competent authority or another armed service or federal agency requires investigation.

(b) Determining who is a government employee is a matter of federal, not local, law. Categories of government employees usually accepted as tortfeasors under federal law are:

(1) Military personnel (soldiers of the Army, or members of other services where the Army exercises single-service jurisdiction on foreign soil; and soldiers or employees within the United States who are members of NATO or of other foreign military forces with whom the United States has a reciprocal claims agreement and whose sending States have certified that they were acting within the scope of their duty) who are serving on full-time active duty in a pay status, including soldiers:

(i) Assigned to units performing active or inactive duty.

(ii) Serving on active duty as Reserve Officer Training Corps (ROTC) instructors.

(iii) Serving as Army National Guard (ARNG) instructors or advisors.

(iv) On duty or training with other federal agencies, for example: the National Aeronautics and Space Administration, the Department of State, the Navy, the Air Force, or DOD (federal agencies other than the armed service

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to which the Soldier is attached may also provide a remedy).

(v) Assigned as students or ordered into training at a non-federal civilian educational institution, hospital, factory, or other facility (excluding soldiers on excess leave or those for whom the training institution or organization has assumed liability by written agreement).

(vi) Serving on full-time duty at non-appropriated fund (NAF) activities.

(vii) Of the United States Army Reserve (USAR) and ARNG on active duty under Title 10, U.S.C.

(2) Military personnel who are United States Army Reserve soldiers including ROTC cadets who are Army Reserve soldiers while at annual training, during periods of active duty and inactive duty training.

(3) Military personnel who are soldiers of the ARNG while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or engaged in properly authorized community action projects under the Federal Tort Claims Act (FTCA), the Non-Scope Claims Act (NSCA), or the National Guard Claims Act (NGCA), unless performing duties in furtherance of a mission for a state, commonwealth, territory or possession.

(4) Civilian officials and employees of both the DOD and DA (there is no practical significance to the distinction between the terms “official” and “employee”), including but not limited to the following:

(i) Civil service and other full-time employees of both the DOD and DA who are paid from appropriated funds.

(ii) Persons providing direct health care services pursuant to personal service contracts under 10 U.S.C. 1089 or 1091 or where another person exercised control over the health care provider’s day-to-day practice. When the conduct of a health care provider performing services under a personal service contract is implicated in a claim, the CJA, Medical Claims Judge Advocate (MCJA), or claims attorney should consult with USARCS to determine if that health care provider can be considered an employee for purposes of coverage.

(iii) Employees of a NAF instrumentality (NAFI) if it is an instrumentality of the United States and thus a

federal agency. To determine whether a NAFI is a “federal agency,” consider both whether it is an integral part of the Army charged with an essential DA operational function and also what degree of control and supervision DA personnel exercise over it. Members or users, unlike employees of NAFIs, are not considered government employees; the same is true of family child care providers. However, claims arising out of the use of some NAFI property or from the acts or omissions of family child care providers may be payable from such funds under subpart K of this part as a matter of policy, even when the user is not acting within the scope of employment and the claim is not otherwise cognizable under any of the other authorities described in this part.

(5) Prisoners of war and interned enemy aliens.

(6) Civilian employees of the District of Columbia ARNG, including those paid under “service contracts” from District of Columbia funds.

(7) Civilians serving as ROTC instructors paid from federal funds.

(8) ARNG technicians employed under 32 U.S.C. 709(a) for claims accruing on or after January 1, 1969 (Public Law 90-486, August 13, 1968 (82 Stat. 755)), unless performing duties solely in pursuit of a mission for a state, commonwealth, territory or possession.

(9) Persons acting in an official capacity for the DOD or DA either temporarily or permanently with or without compensation, including but not limited to the following:

(i) Dollar-a-year personnel.

(ii) Members of advisory committees, commissions, or boards.

(iii) Volunteers serving in an official capacity in furtherance of the business of the United States, limited to those categories set forth in DA Pam 27-162, paragraph 2-45.

NOTE TO § 536.23: See the parallel discussion at DA Pam 27-162, paragraph 2-2.

### § 536.24 Delegation of investigative responsibility.

(a) *Area Claims Office.* An ACO is authorized to carry out its investigative responsibility as follows:

(1) At the request of the area claims authority, commanders and heads of